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Symposium: Terrorism in the Middle East

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Akron Law Review

SYMPOSIUM:

TERRORISM IN THE MIDDLE EAST

FOREWORD

HAMILTON DESAUSSURE*

TERRORISM, LIKE THE RECENT tornados which struck in the Midwest, can come upon the unwary with lightning swiftness, strike in unexpected places, leave in their trail devastation, death, and helpless victims, and generate in relatives, friends, and a concerned public a sense of frustration and futility. Frustration in the sense that there was so little forewarning of the dramatic events that are to leave the lives of certain individuals forever changed. Futility that so little seems to be accomplished to prevent such destructive forces from again unfolding. The tornado that struck Xenia, Ohio, on April 3, 1974, took more than a score of lives. The terroristic group which struck Qiryet Shemoneh, Israel, on April 11, 1974, took 18. In the end results there are remarkable similarities between the two phenomena—one man-made, and one caused by the forces of nature. Terrorism, unlike tornados, can and must be stamped out by international cooperation and agreement. It can be contained and then ended by the determined international cooperation of nations and states and appropriate and effective sanctions imposed on those who continue to perpetrate this criminal conduct on their fellow man. By denying terrorists refuge in any country to which they might flee, by requiring immediate prosecution or extradition, by refusal to meet their extravagant demands, terrorism, and the reasons for promoting terrorism could be cancelled out. It may be a long time before tornados can be controlled. As yet man has not devised the scientific and technological means by which they can be dissipated before they touch the ground with their devastating effects, and (unlike the seeding of clouds to alter the rainfall) tornados seem unamenable to any

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man-contrived efforts to dissipate their ferocity. However, international terrorism, as a product of man, not of nature, has its genesis in the minds of men, who can be deterred, can be caught, and their objectives thwarted, by the determined efforts and agreement of the community of nations.

Terrorism may be on either a domestic or international scale. It may be for a variety of reasons—for money, for misguided patriotism, for psychological satisfaction, for revolutionary idealism, even for revenge. For whatever the cause, those who seek their objective through sudden, swift, and unlawful acts of terrorism need to be brought to prompt justice with adequate and equally stern punishment. The Middle East was chosen as the background scene for our discussion of terrorism. It focuses on one of the two main areas in the world (the other being Southeast Asia) where open warfare, insurgency, and terrorism seem to have become a way of life. The volatile acts of terrorism and the aroused national armed reprisals which ensue can provoke the armies of the region into a major conflict.

The tensions of the Middle East, the rivalries, the diverse goals of national, ethnic, and partisan groups seem to foster criminal acts of terrorism just as particular geographical areas seem peculiarly susceptible to the ravages of recurring tornados. In the Middle East it is the Liberation groups, the idealists, the frustrated, the fragmented nationalistic movements that evoke terroristic conduct. Conduct resorted to as a substitute for open warfare by groups too small and too weak to engage in open hostilities as an organized force on a national scale. Yet, their acts are in fact armed conflict by any definition, an armed conflict without the normal protection and safeguards of the laws of war. There is no mercy for civilians caught up in the hands of terrorists, no protection, no minimum standards of treatment, no communication between the victims and their families and national authorities, and in the ultimate conclusion, no guarantee that those captured and held for political advantage will ever again be repatriated or protected.

In armed conflict, recognized as such under the Geneva Convention of 1949 and the older Hague Conventions of 1907, civilians not partaking in hostilities are to be treated humanely; and, violence to life and person, in particular murder and cruel treatment, are expressly prohibited. Terrorism on the other hand, is not specifically identified as such in either the Hague or Geneva conventions; there is as yet no general international agreement in force for the prevention of this crime although there have been several significant attempts by the United Nations and prior to World War II, the League of Nations.

No nation, at least openly, defends terrorism as a legitimate means of seeking even limited goals and yet such acts remain to haunt us daily and to terrify those who become the victims of its consequences. All too frequently the devastation and the sorrow terrorism brings is magnified by

the escape of the terrorists and their publicly acclaimed safe haven in a foreign land. All too frequently terrorist groups sense achievement through their efforts in countries at least in idealistic agreement with the aims of the terrorists themselves.

The Akron International Law Society, as an organization of the Akron Law School, convened a Symposium last fall in Akron on the subject of terrorism. The Society was fortunate to gather for the Symposium a group of distinguished international lawyers, all with considerable knowledge on the subject of international terrorism and the Middle East tensions. The purpose of the Symposium was to define the causes of terrorism in the Middle East and offer an expression of individual views as to how to regulate and ultimately abate its causes and effects within this area. All of the panelists have devoted concentrated efforts in the past to curbing terrorism. Professor Richard Baxter of Harvard is the current editor-in-chief of the *American Journal of International Law*. He is one of the foremost experts on the regulation of armed conflict and the amelioration of the conditions of civilians and non-combatants during hostilities. He was the guiding force, 20 years ago, on the revision of the *U.S. Army Field Manual FM27-10* on the Law of Land Warfare (1956). This manual still remains one of the principal sources for guidance for the laws regulating armed conflict. Professor Baxter was a United States delegate to the conference of 1974 convened to consider the two-draft additional Protocols to the Geneva Conventions of 1949 on the protection of war victims.

Professor Cherif Bassiouni is an expert on the Middle East. He received his legal education at the University of Cairo and obtained his S.J.D. at George Washington University. He has maintained close connections with Egyptian government officials and is the recent author of a two-volume treatise on *International Criminal Law*. Mr. Jordan Paust is completing his doctorate at Yale University under Professor Myres McDougal on the laws regulating armed conflict. Mr. Paust was an associate professor at the U.S. Judge Advocate General School in Charlottesville for four years as a specialist on the laws of war.

The Akron Law School was extremely fortunate to gather these experts for a common discussion and analysis of one of the most urgent problems confronting a peace-seeking community of United Nations. The Commentator selected is Professor Thomas Mallison, Director of International Law Programs at George Washington University, who has an equally distinguished background in the subject of international terrorism. Professor Mallison has been appointed to the Stockton Chair of International Law at the Naval War College (1974-1975).

The editors of the *Akron Law Review* have done an outstanding job in their painstaking research always necessary to translate a fine symposium into a well-balanced *Law Review* article. It is hoped that the

publication of this Symposium will serve to further stimulate thinking and constructive writing in other journals and in any future symposium on this subject and to ultimately bring about international sanctions for this offense. While the tornado and its causes and effects must be left to meteorologists and natural phenomenologists, the containment of international terrorism can best be achieved through the efforts of international lawyers, statesmen, legislators and an aroused public, who demand prompt and effective resolution of this persistent and malignant problem.

COMMENT: JURIDICAL CONTROL OF TERRORISM

WILLIAM T. MALLISON*

THE PRESENT COMMENT is written upon the basic assumption that the purpose of the juridical doctrines designed to control terror is to reduce, and if possible to eliminate, the destruction of human and material values involved in acts of terror. Professor Bassiouni approaches this problem through a threefold categorization of terror based upon motivation: first, terror designed to promote the private gain or profit of common criminals; second, terrorism by the mentally ill, and third, ideologically motivated terrorism. He deals primarily with the third one. This categorization is useful since it leads directly into a study of the causes of acts of terror which can in turn provide the basis for more effective control. It is difficult to see how a start toward effective control can be made without a fundamental understanding of the causes involved. Such an understanding does not condone either the causes of terrorism or its results.

Professor Bassiouni has also emphasized a fundamental consideration in pointing out that particular acts of terrorism must be condemned without regard to the identification of the perpetrator as an individual, a group or a government.¹

There are also significant considerations in not excusing terroristic acts because of the governmental identity of terrorists. It is well known that reciprocity and mutuality in observance of the law, including the existing proscriptions against terrorism, involves one of the more effective sanctioning processes. It would be a surprising proposition if governments, which are the principal authors of the existing international law doctrines, were immunized from the restrictions against

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¹ A conception of control of terror, consistent in fundamentals with Professor Bassiouni's, is developed in W. T. & S. V. MALLISON, *The Concept of Public Purpose Terror in International Law: Doctrines and Sanctions to Reduce the Destruction of Human and Material Values*, 18 HOWARD L.J. 12 (1973).